

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3700(c), Oak Mortality Disease Control

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligations of the California Department of Food and Agriculture to protect the agricultural industry of California and prevent the introduction and spread of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3700 is to provide authority for the State to mitigate the effects of oak mortality disease (sudden oak death) on the agricultural industry, which includes native tree stands, by establishing a program to arrest the artificial spread of the disease to additional areas; thereby protecting California's agricultural industry and environment.

The factual basis for the determination by the Department that amendment of Section 3700(c) is necessary is as follows:

The California Department of Food and Agriculture has already found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. The Department adopted a regulation, Section 3700, to implement a statewide program to arrest the artificial spread

of the disease to additional areas. Continued action is necessary to further contain and minimize the destructive impact of this pest and disease at the earliest possible time. On March 11, 2003, the United States Department of Agriculture, Animal and Plant Health Services, Plant Protection and Quarantine (USDA/APHIS/PPQ) notified the Department that researchers in Europe identified three new plant species as being new hosts of *Phytophthora ramorum*. All of these new hosts were found in a nursery or nursery setting. As a result, the USDA/APHIS/PPQ is regulating the interstate movement of these hosts under Title 7, Chapter III, Part 301, Section 301.92 of the Code of Federal Regulations. These new hosts are andromeda (*Pieris formosa*), laurustinus (*Viburnum tinus*), and camellia (*Camellia japonica*). The USDA/APHIS/PPQ is immediately restricting andromeda (plants and all parts except clean seeds), laurustinus (plants and stems) and camellia (leaves). The Department concurs with this determination and is proposing to add plants and all plant parts, except seed, of one host; plants and stems of another host; and, leaves of the other host to the list of articles and commodities covered by this regulation.

Additionally, the USDA/APHIS/PPQ issued an interim rule that was effective February 14, 2002 that lists all plant parts of rhododendron (*Rhododendron* spp., including azalea), except seed, as regulated articles under Title 7, Chapter III, Part 301, Section 301.92-2 of the Code of Federal Regulations and prohibits the interstate movement from the quarantined areas except in accordance with its regulations. As a result, it is necessary to harmonize the State's regulation governing intrastate movement with the federal regulation governing interstate movement by adding azaleas to the list of articles and commodities covered by this regulation.

The Department amended this regulation because it was necessary to modify the authority for an established statewide program in order to arrest the artificial spread of the disease to additional areas. The amendment of this regulation was necessary to mitigate the effects of this disease on the

agricultural industry, which includes native tree stands and ornamental plantings.

In addition, because the spread of the disease threatens the agricultural industry of California, its detection in additional host plants constituted an emergency necessitating immediate action to arrest the spread of the pest. Specific facts and circumstances clearly also indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constituted an emergency. The Department was therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The Department has determined that *Phytophthora ramorum* is a serious forest pest for which control is required to prevent further spread and harm to forests, parks, commercial and urban landscapes, and watersheds. This disease is known to occur in twelve California counties. Oak mortality disease is serious due to the fact that it kills tanoak, coast live oak, and black oak trees. The pest has been confirmed as infecting Shreve's and canyon live oak and non-oak species such as rhododendron, huckleberry, bigleaf maple, California buckeye, California coffeeberry, coast redwood, Douglas-fir, manzanita, toyon and Western star flower causing foliar and stem disease symptoms.

Recently, the causal agent of limited disease symptoms detected on laurustinus and camellia was identified as *Phytophthora ramorum*. The fungus has been detected on and isolated (confirmed) from only stems, including the basal crown area of laurustinus and from leaves of camellia. However, the causal agent of disease symptoms identified as *Phytophthora ramorum* from andromeda was recovered from all plant parts except seeds. Therefore, the Department amended Section 3700(c) to add plants and plant parts, except seed, of andromeda (*Pieris formosa*); plants and stems of laurustinus (*Viburnum tinus*); and leaves of camellia (*Camellia japonica*) to the regulation. The Department is also added all plant parts of rhododendron (*Rhododendron* spp.,

including azalea), except seed, to the regulation in order to harmonize the intrastate restrictions with the interstate restrictions imposed by the federal regulation.

The amendment of Section 3700(c) established that leaves of camellia, *Camellia japonica*; plants and plant parts (except seed) of andromeda, *Pieris formosa*, and rhododendron, *Rhododendron* spp., including azalea; and plants and stems of laurustinus, *Viburnum tinus*, are included as regulated articles and commodities. If the disease is allowed to spread and become established in additional areas, California's agricultural industry will suffer losses due to the death of trees in native stands and

ornamental plantings and loss of markets if other states or countries enact quarantines against California products.

To prevent artificial spread of the disease to non-infested areas to protect California's agricultural industry, it was necessary to immediately establish and enforce restrictions on the movement of two additional hosts and potential carriers which can move this pest from the infested area. Therefore, it was necessary to amend Section 3700(c)(1), (4) and (5) on an emergency basis.

As a result of this amendment, it was necessary to renumber the previous subsections (c)(4) and (c)(5) of Section 3700 to subsections (c)(6) and (c)(7), respectively.

#### Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3700 does impose a mandate on the local agencies, but not on school districts. The agricultural commissioner of a county that is regulated has a duty to enforce the regulation. Reimbursement will be made for costs resulting from this mandate from the \$492,235 budgeted for this purpose.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code, funds for reimbursement for costs to local agencies have already been appropriated, and no costs or savings in federal funding to the State.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs. The Department of Food and Agriculture finds that the amendment of these regulations may have an adverse economic impact on California businesses, which should not include the ability of California businesses to compete with businesses in other states. The economic impact on those California businesses is not expected to be significantly adverse.

The types of businesses that may be impacted are: landfills and some nurseries. The requirements of the regulations include many options to achieve compliance. The Department also identified approximately 315 nurseries in the regulated area. The annual costs for compliance with these regulations are not expected to be significantly adverse with possible additional production and handling costs averaging approximately \$200 per production nursery. In addition, 45 landfills have been located in the area. The compliance costs for these businesses may average \$200 per year per business.

The Department has also identified approximately 1,939 landscape maintenance businesses (includes tree services, gardeners, etc.), six biomass (cogeneration) and 29 green waste (includes composting) facilities. While these businesses may be impacted, there are no anticipated costs for compliance with the regulation.

### Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### Information Relied Upon

The Department relied upon the following studies, reports, and documents in the amendment of Section 3700, subsection (c):

“Estimated Annual Economic Impact Oak Mortality Disease Control, Section 3700, Amendment of Subsection (c),” revised April 4, 2003, California Department of Food and Agriculture, Plant Health and Prevention Services, Permits and Regulations.

E-mail of March 12, 2003 to Stephen Brown from Nick Condos and it’s attachment, “Sudden Oak Death (SOD), Phytophthora ramorum, Expansion of Listed Regulated Articles—California and Oregon,” Richard L. Dunkle, Deputy Administrator, Plant Protection and Quarantine, March 11, 2003.

E-mail of January 24, 2003 to Stephen Brown from Aurelio Posadas.

Department of Agriculture, Animal and Plant Health Inspection Service, & CFR Part 301, [Docket No. 01-054-1], Phytophthora ramorum; Quarantine and Regulations, Federal Register, Vol. 67, No. 31, Thursday, February 14, 2002.